

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5173 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

JIGNESH HASMUKHBHAI SHAH - Petitioner(s)

Versus

MAHARAJA SAYAJIRAO UNIVERSITY & 1 - Respondent(s)

Appearance :

MR NILESH A PANDYA for Petitioner(s) : 1,

MR NV ANJARIA for MR MITUL SHELAT for Respondent(s): 1-2

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 07/07/2006

ORAL JUDGMENT

1. This petition, under Article 226 of the Constitution of India, seeks following reliefs:

"11. Petitioner, therefore, prays that:-

- A) This Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondents, their agents and servants, to absorb the petitioner on the post of Accounts Clerk in the pay scale of Rs.3050-4950, forthwith;

- B) Pending hearing and final disposal of this petition, this Hon'ble Court may be pleased to direct the respondents, their agents and servants, to continue the petitioner in service on a fixed salary of Rs.1960/- p.m. on the post of Accounts Clerk;
 - C) Any other such and further orders as are deemed just and proper may also be passed.
 - D) Costs of this petition be kindly awarded to the petitioner.
2. The facts are not in dispute. Pursuant to advertisement issued by respondent-University the petitioner was selected and put on select list at Sr. No.38 in 1993 for the post of Accounts Clerk after necessary procedure was carried out. On 3rd November, 1997 he was given first appointment order for 60 days and thereafter with intervening breaks was put in service from time to time. It is the say of the petitioner himself that the select list appointment is expiring on 3rd July, 1998 and in case the petitioner is not protected his service will automatically be terminated after 3rd July, 1998. It is also an admitted fact that on 19th May, 1998 respondent-University has issued fresh advertisement for likely vacancies in the posts of General Clerks, Accounts Clerks and Typist Clerks.

3. The learned advocate for the petitioner submits that those junior to the petitioner have been absorbed permanently and hence, the services of the petitioner should be regularized.
4. When the petition came up for admission on 19th July, 1999 though the petition was admitted, no interim relief was granted. In the aforesaid circumstances, even as per the say of the petitioner his services would have stood terminated after 3rd July, 1998. In the circumstances, nothing survives in the petition and the petition is required to be disposed of as having become infructuous.
5. Even otherwise as per the recent pronouncement of the Apex Court in the case of *Secretary, State of Karnataka & Ors. Vs. Umadevi*, (2006) 4 SCC 1, it is not permissible in exercise of powers and jurisdiction under Article 226 of the Constitution to make any orders of regularization of service. Hence, the petition is rejected as having become infructuous. Rule discharged. There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

Bhavesb*